

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 23

BY REVENUE AND TAXATION COMMITTEE

AN ACT

RELATING TO TAXES; AMENDING SECTION 63-3045, IDAHO CODE, TO PROVIDE FOR A TAXPAYER'S RIGHTS FOLLOWING A PERFECTED PROTEST AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 63-3045B, IDAHO CODE, TO CLARIFY THE CIRCUMSTANCES UNDER WHICH A NOTICE OF DEFICIENCY BECOMES FINAL AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 14-532, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE AND TO MAKE A TECHNICAL CORRECTION; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 63-3045, Idaho Code, be, and the same is hereby amended to read as follows:

63-3045. NOTICE OF REDETERMINATION OR DEFICIENCY -- INTEREST.

(1) (a) If, in the case of any taxpayer, the state tax commission determines that there is a deficiency in respect of the tax imposed by this title, the state tax commission shall, immediately upon discovery thereof, send notice of such deficiency to the taxpayer by first class mail or by other commercial delivery service providing proof of delivery, whichever is the most cost efficient. The notice shall be sent to the taxpayer's last address known to the state tax commission. The notice of deficiency shall be accompanied by an explanation of the specific reason for the determination and an explanation of the taxpayer's right to appeal. Within sixty-three (63) days after such notice is mailed, the taxpayer may, at his option, file a protest in writing with the state tax commission and obtain redetermination of the deficiency.

(b) If the taxpayer files a protest with the state tax commission within the period set forth in ~~subsection (1) paragraph (a)~~ of this subsection, and such protest does not comply with the rules of the state tax commission and is therefore inadequate to perfect the taxpayer's right to a redetermination of the deficiency determination, then, the state tax commission shall notify the taxpayer, in the same manner as set forth in ~~subsection (1) paragraph (a)~~ of this subsection, of such inadequacies, setting forth in said notice the corrective action to be taken by the taxpayer to perfect his protest. The taxpayer shall thereafter have twenty-eight (28) days from the date of said notice to perfect his protest.

(c) No assessment of a deficiency in respect to the tax imposed by this chapter, and no distraint or proceedings in court for its collection, shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor until all appeal rights relating to the deficiency have become final.

(2) Following a perfected protest, the taxpayer has the right to a hearing. The purpose of the hearing is to discuss the deficiency determination

1 and the taxpayer's protest with a commissioner or duly authorized represen-
 2 tative of the commission. The meeting shall be held informally and evidence
 3 shall be freely admitted regardless of the rules of evidence.

4 (3) Any hearing conducted under the provisions of this section may be
 5 conducted, in whole or in part, by telephone, television, or other elec-
 6 tronic means, if each participant in the hearing has an opportunity to
 7 participate in the entire proceeding while it is taking place.

8 (4) A taxpayer has the right to be represented by, or be accompanied by,
 9 any person of his choice in any proceeding before the tax commission. If the
 10 taxpayer is not present at a proceeding, the representative of that taxpayer
 11 must be designated in writing by the taxpayer as shall be prescribed in ad-
 12 ministrative rules or in any manner acceptable to the tax commission.

13 (5) Following a perfected protest, the taxpayer may submit additional
 14 evidence or documentation during the redetermination process subject to the
 15 provisions of section 63-3045B(3) (a), Idaho Code.

16 (6) If the taxpayer does not file a protest with the state tax commis-
 17 sion within the time prescribed in subsection (1) (a) of this section, the de-
 18 ficiency shall be assessed and shall become due and payable upon notice and
 19 demand from the state tax commission.

20 (67) (a) Interest shall apply to deficiencies in tax and refunds of tax.
 21 Interest shall not apply to any penalty or to unpaid accrued interest.
 22 Interest relating to deficiencies or refunds accruing after the origi-
 23 nal due date of the return, but not including extensions of the due date,
 24 shall be computed on the net of any underpayments and overpayments of a
 25 tax liability required to be shown as due on the same return.

26 (b) Interest upon any deficiency shall be assessed at the same time as
 27 the deficiency, shall be due and payable upon notice and demand from
 28 the state tax commission and shall be collected as a part of the tax at
 29 the rate per annum determined under the provisions of ~~subsection (6)~~
 30 paragraph (c) of this subsection from the date prescribed for the pay-
 31 ment of the tax. In the event any of the deficiency is reduced by reason
 32 of a carryback of a net operating loss or a capital loss carryback, such
 33 reduction in deficiency shall not affect the computation of interest
 34 under this subsection for the period ending with the last day of the tax-
 35 able year in which the net operating loss or capital loss arises.

36 (c) The rate of interest accruing during any calendar year, or portion
 37 thereof, upon any deficiency, or payable upon an overpayment or re-
 38 fund, shall be two percent (2%) plus the rate determined under section
 39 1274(d), Internal Revenue Code, by the secretary of the treasury of the
 40 United States as the midterm federal rate as it applies on September 15
 41 of the immediately preceding calendar year rounded to the nearest whole
 42 number.

43 (78) When the time provisions contained in this section conflict with
 44 the provisions of section 63-4208, Idaho Code, relating to the assessment of
 45 taxes on illegal possession of controlled substances, the provisions of sec-
 46 tion 63-4208, Idaho Code, shall prevail.

47 SECTION 2. That Section 63-3045B, Idaho Code, be, and the same is hereby
 48 amended to read as follows:

1 63-3045B. FINAL DECISIONS OF THE COMMISSION. (1) If a taxpayer does
 2 not file a protest within the sixty-three (63) day period allowed, the no-
 3 tice of deficiency of the tax commission becomes final on the day following
 4 the end of the protest period.

5 (2) If a taxpayer files a protest, but does not perfect the protest, ~~re-~~
 6 ~~quest a hearing, or does not submit additional evidence or documentation,~~
 7 ~~or does not request additional time in which to respond,~~ the notice of defi-
 8 ciency of the tax commission becomes final on the twenty-ninth day following
 9 the date the tax commission notified the taxpayer that the protest was not
 10 perfected, except that the tax commission may reduce the amount of the defi-
 11 ciency during the twenty-nine (29) day period.

12 (3) When a perfected protest has been filed, the state tax com-
 13 mission shall, within fourteen (14) days thereof, provide the taxpayer
 14 with a written ~~acknowledgement~~ acknowledgment of the protest. After the
 15 ~~acknowledgement~~ acknowledgment, a final decision of the tax commission must
 16 be rendered within one hundred eighty (180) days from either:

17 (a) A request in writing, in a form prescribed by rules of the tax com-
 18 mission, from the taxpayer for a final decision on that issue; if the
 19 taxpayer requests such a decision, the tax commission may refuse to ac-
 20 cept additional evidence or documentation or refuse to allow an appear-
 21 ance at any proceeding with the commission or any representative of the
 22 commission during such one hundred eighty (180) day period; or

23 (b) The conclusion of any hearing pursuant to section 63-3045(2), Idaho
 24 Code, and the taxpayer has not requested or received any extension of
 25 time to present additional evidence or testimony.

26 (4) A final decision may be held in abeyance, notwithstanding the re-
 27 quirements of subsection (3) of this section, with the prior approval in
 28 writing of the taxpayer.

29 (5) If a final decision of the tax commission is not rendered or the
 30 protest is not resolved by compromise, consent or withdrawal of the notice of
 31 deficiency determination within the time limits established by subsection
 32 (3) of this section, the notice of deficiency shall be null and void ab ini-
 33 tio, with prejudice.

34 (6) A final decision of the tax commission shall be issued in writ-
 35 ing and mailed or served upon the taxpayer within the time limits set forth
 36 herein. The final written decision of the tax commission shall, one hundred
 37 twenty (120) days after the date of the final written decision, be available
 38 for public inspection and copying pursuant to the provisions of section
 39 74-102, Idaho Code, except:

40 (a) The taxpayer's name, address, taxpayer identification number, so-
 41 cial security number, permit number, or other identifying information
 42 shall be removed from the final written decision of the tax commission
 43 that is made available to the public; and

44 (b) Any proprietary or other identifying information contained in the
 45 written decision that the taxpayer requests be excised shall be excised
 46 by the tax commission in the final written decision made available
 47 to the public. The taxpayer must make such request in writing before
 48 ninety-one (91) days have elapsed after the date of the final decision.

49 (7) The tax commission shall label each written decision with a unique
 50 identification number and shall keep a list containing each decision num-

ber and the date of issuance, as excised in accordance with the provisions of this section. A decision shall serve as precedent for the tax commission in future protest determinations unless information excised, court decisions, changes in the Idaho Code, or changes in applicable administrative rules overrule, supersede, modify, distinguish, or otherwise make inapplicable the written decision of the tax commission.

SECTION 3. That Section 14-532, Idaho Code, be, and the same is hereby amended to read as follows:

14-532. ENFORCEMENT -- ACTIONS TO ENFORCE UNCLAIMED PROPERTY LAW -- ADMINISTRATIVE RULES. (1) The collection and enforcement procedures provided by the Idaho income tax act, sections 63-3038, 63-3039, and 63-3042 through 63-3065A, Idaho Code, but excluding ~~subsection (6) of section 63-3045(7)~~, Idaho Code, shall apply and be available to the state treasurer for enforcement of the provisions of this chapter and collection of any property required to be transferred shall be treated in the same manner as taxes due the state of Idaho, and wherever liens or any other proceedings are defined as income tax liens or proceedings, they shall, when applied in enforcement of this chapter, be described as unclaimed property liens and proceedings.

(2) The powers and duties held by the state tax commission on June 30, 2010, pursuant to the provisions of subsection (1) of this section, shall for the purposes of this chapter and for the administration of the unclaimed property, be deemed to be powers and duties of the state treasurer on and after July 1, 2010.

(3) The administrative rules of the state tax commission in effect on June 30, 2010, for administering the provisions of this chapter shall remain in force and effect as if promulgated by the state treasurer until new rules are promulgated by the state treasurer and become effective pursuant to the provisions of section 67-5224, Idaho Code, at which time rules promulgated by the state tax commission shall be deemed repealed. The state treasurer shall have the power to promulgate administrative rules to implement the provisions of this chapter in compliance with chapter 52, title 67, Idaho Code.

SECTION 4. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval and shall apply to protests received on or after that date.